

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY DOWNING,

Defendant-Appellant.

UNPUBLISHED

September 20, 2002

No. 233452

Macomb Circuit Court

LC No. 99-002796-FC

Before: Fitzgerald, P.J., and Bandstra and Gage, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of possession with the intent to deliver more than 650 grams of a mixture containing the controlled substance cocaine, MCL 333.7401(2)(a)(i), and driving with a suspended license, MCL 257.904. The trial court sentenced defendant to serve concurrent terms of twenty to thirty years' imprisonment for the controlled substance conviction, and ninety days in jail for his conviction of driving while license suspended. Defendant appeals as of right. We affirm.

This case arises from the discovery of approximately one kilogram of cocaine on the rear floor of a car being driven by defendant. Police were alerted to the possible presence of the cocaine inside the vehicle by a tip from a confidential informant. On appeal, defendant argues that because the confidential informant's tip lacked sufficient detail to prove reliable, and nothing in the subsequent police investigation sufficiently corroborated the informant's claim that defendant would be trafficking in illegal drugs, the police were without probable cause to stop defendant's vehicle and the trial court therefore erred in failing to suppress the evidence as the fruit of an unlawful automobile stop. We disagree.

In challenging the validity of the stop on the basis of an insufficiently reliable informant's tip, defendant fails to address the trial court's finding that, irrespective of whether the police were constitutionally justified in stopping defendant for suspicion of drug trafficking, defendant was lawfully stopped and arrested for the misdemeanor offense of driving while license suspended, see MCL 257.904, and that, therefore, the subsequent search without warrant of the passenger compartment of the vehicle driven by defendant was permissible as a search incident to a lawful arrest. In so ruling, the trial court correctly noted that pursuant to MCL 764.15(1)(a), a police officer may arrest a person without warrant when a felony, misdemeanor, or ordinance violation is committed in the officer's presence. The trial court further noted that under our Supreme Court's decision in *People v Dixon*, 392 Mich 691, 696-699; 222 NW2d 749 (1974),

the collective perceptions of officers working on a case may be combined to satisfy the presence requirement for a misdemeanor arrest, and concluded that here, the combined testimony of the officers called at the suppression hearing was sufficient to show that the police were aware that defendant was driving with a suspended license at the time he was stopped and that such knowledge formed the basis for defendant's arrest. Although this Court reviews de novo a trial court's ultimate decision on a motion to suppress, the trial court's findings of fact in support of that decision are reviewed for clear error. *People v Beuschlein*, 245 Mich App 744, 748; 630 NW2d 921 (2001). After review of the testimony offered at the suppression hearing, we find no error in the trial court's conclusion that the stop, arrest, and search of defendant's automobile were proper on these grounds.

Trooper Shannom Sims of the Michigan State Police testified that shortly after being contacted by the confidential informant, he pulled defendant's official driving record and learned that defendant's license was suspended. Additional testimony offered at the hearing established that this information was ultimately relayed by other officers involved in the investigation to the arresting officer, who both received the information and witnessed defendant driving the vehicle prior to the stop. Like the trial court, we find such testimony sufficient to support defendant's contemporaneous stop and arrest under MCL 764.15(1)(a). Although defendant attempted to raise a question as to the veracity of the officers' claim that defendant was stopped for driving with a suspended license, this Court gives great deference to the trial court's assessment of the credibility of witnesses. *People v Brannon*, 194 Mich App 121, 131; 486 NW2d 83 (1992). Moreover, although Trooper Sims testified that he would have ordered defendant stopped in conjunction with the ongoing drug investigation even had he not known of defendant's suspended license, because the police were legally permitted to effectuate a stop of the vehicle on the basis of an observed misdemeanor, the stop, as well as defendant's subsequent arrest, were constitutionally valid despite any additional motivations the officers may have harbored in effectuating the stop. See, e.g., *People v Haney*, 192 Mich App 207, 210; 480 NW2d 322 (1991) (a stop or arrest is constitutional "as long as the police are doing no more than they are legally permitted and objectively authorized to do"). Accordingly, the trial court properly declined to suppress the evidence regardless of the reliability of the informant's tip.

Defendant next argues that there was insufficient evidence adduced at trial to support a finding that he possessed the cocaine found in the passenger compartment of the automobile. Again, we disagree. When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Joseph*, 237 Mich App 18, 20; 601 NW2d 882 (1999).

Although there was no evidence that defendant was in actual possession of the cocaine at the time the vehicle was stopped, "[a] person need not have actual physical possession of a controlled substance to be guilty of possessing it. Possession may be either actual or constructive." *People v Wolfe*, 440 Mich 508, 519-520; 489 NW2d 748 (1992), modified on other grounds 441 Mich 1201 (1992). Constructive possession exists when the totality of the circumstances indicates a sufficient nexus between defendant and the contraband. *Id.* at 521. Moreover, circumstantial evidence and the reasonable inferences arising therefrom are sufficient to establish possession. *People v Fetterley*, 229 Mich App 511, 515; 583 NW2d 199 (1998).

Viewed in a light most favorable to the prosecution, the evidence at trial was sufficient for a rational trier of fact to conclude that defendant constructively possessed the cocaine. Testimony offered at trial indicated that while conducting surveillance on a vehicle being driven by defendant, an undercover drug enforcement officer observed defendant enter a Farmer Jack's grocery store then return to the car with a small white shopping bag, which he placed inside the car. Shortly thereafter, defendant was stopped while driving the vehicle alone. During a subsequent search of the vehicle, a Farmer Jack's shopping bag containing boxes of baking soda and small plastic baggies was found on the rear floorboard of the car just behind the driver's seat. Underneath that bag, officers found what was later determined to be more than one kilogram of powdered cocaine, which had been compressed and packaged into a "brick" approximately twelve inches long and six inches wide. Trooper Sims offered testimony that, in his opinion as an experienced undercover narcotics officer, the street value of the cocaine as packaged was between \$25,000 and \$32,000, but if "cooked" into crack cocaine using water and the baking soda found inside the shopping bag, the cocaine could be sold for as much as \$200,000.

From this testimony, a reasonable inference that defendant constructively possessed the cocaine with the intent to convert it into a more valuable form for delivery can be drawn. Although, as noted by defendant on appeal, the vehicle in which the cocaine was found was not registered to defendant, it is not unreasonable to conclude that someone would not have left such valuable cargo inside the vehicle without defendant's knowledge. Moreover, the substance was found directly beneath the grocery bag defendant had been seen placing into the car and which contained the necessary ingredients to "cook" and repackage the cocaine into its more valuable form. The evidence supports defendant's conviction.

We affirm.

/s/ E. Thomas Fitzgerald

/s/ Richard A. Bandstra

/s/ Hilda R. Gage